

**GROUND LEASE**  
**(with renewal and purchase options)**

between

**HADEN ROAD CORPORATION,**  
a Texas corporation  
("Landlord")

and

**ALUMINUM CHEMICALS, INC.,**  
a Texas corporation  
(the "Tenant")

regarding

**1632 Haden Road**  
**Harris County, Texas**

Effective date: 13 February 1995

9548469



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NB: Exhibit A- Metes and bounds description of the Land  
Exhibit B- Permitted exceptions to title to the Land

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**GROUND LEASE**  
**(with renewal and purchase options)**

STATE OF TEXAS           §  
                                     §  
COUNTY OF HARRIS       §

**THIS GROUND LEASE** (this "Ground Lease") is made and entered effective as of 13 February 1995 by and between **HADEN ROAD CORPORATION**, a Texas corporation ("Landlord"), and **ALUMINUM CHEMICALS, INC.**, a Texas corporation ("Tenant").

**RECITALS:**

Landlord desires to lease to Tenant and Tenant desires to lease from Landlord on the terms more particularly set forth below a tract of approximately 109.8185 acres of land located at 1632 Haden Road and being out of the Richard and Robert Vince Survey, Abstract No. 76 in Harris County, Texas, as more particularly described by metes and bounds on Exhibit A attached hereto and incorporated herein for all purposes by this reference, together with all rights, privileges, easements, and appurtenances thereto (collectively, the "Land").

Concurrently herewith Landlord has sold and conveyed to Tenant all of the buildings, improvements, fixtures, and other depreciable assets now situated on the Land, as more particularly set forth in a General Warranty Deed of even date herewith from Landlord (as grantor) to Tenant (as grantee) and filed of record in the Official Real Property Records of Harris County, Texas.

Accordingly, Landlord and Tenant have executed and delivered this Ground Lease pursuant to which Landlord has leased to Tenant and Tenant has leased from Landlord the Land, all as set forth in the succeeding provisions hereof (which shall control over any conflicting or inconsistent recitals set forth above).

**AGREEMENTS:**

In consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Landlord and the Tenant do hereby agree as follows:

**ARTICLE I. LEASE OF THE LAND**

**1.1. Lease of the Land.** For and in consideration of the rents and covenants, agreements, and conditions herein set forth, which Tenant agrees to cause to be paid, kept, and performed, Landlord hereby LEASES exclusively to Tenant, and Tenant does hereby rent from Landlord, all of the Land, including all rights, privileges, easements, and appurtenances thereto, subject only to the easements and other matters referred to in Exhibit B attached hereto and incorporated herein for all purposes by this reference.

1.2. **Habendum.** TO HAVE AND TO HOLD the Land, including all and singular the rights, privileges, easements, and appurtenances thereto attaching or otherwise belonging, exclusively unto Tenant, its successors and assigns, for the Lease Term (as defined below) and subject to the covenants, agreements, terms, provisions, and limitations herein set forth.

## **ARTICLE II. LEASE TERMS**

2.1. **Commencement and Termination Dates.** This Ground Lease shall continue and be in full force and effect for a term of fifty (50) years (as it may be renewed, extended, or amended from time to time, hereinafter called the "Lease Term") commencing on 13 February 1995 (the "Commencement Date") and ending on 13 February 2045 (the "Termination Date"), unless extended or earlier terminated as provided herein.

2.2. **Rental.** Rental for the use and occupancy of the Land shall be Sixty-Six Thousand Dollars (\$66,000) per annum and shall be due and payable annually, in arrears on or before 31 December for the preceding calendar year (or portion thereof comprising the Lease Term). Rental payments for portions of calendar years included within the Lease Term shall be prorated based on the actual number of days in that calendar year and the actual number of days of that calendar year included within the Lease Term. It is expressly agreed that the above rental payments shall be due by Tenant to Landlord at Landlord's principal offices in Harris County, Texas.

2.3. **Additional Rent.** Any and all monetary amounts payable by Tenant hereunder with respect to the Land whether or not payable to Landlord shall be deemed rental hereunder for all purposes. The payments of any amounts other than the basic rental payments described in Section 2.2 shall be designated hereinafter as Additional Rental.

2.4. **Evergreen Provision.** Unless an express written notice of termination is provided by either party to the other at least thirty (30) days prior to the expiration of the Lease Term, then the Lease Term shall renew automatically for successive one year periods and each such automatic extension period shall constitute and comprise a portion of the Lease Term hereunder. Each such automatic extension period shall be upon all the same terms, covenants, and conditions as set forth herein. By way of clarification, the renewal option under Article XIII below shall continue and remain in effect and exercisable during any such automatic extension period or periods.

## **ARTICLE III. TAXES AND UTILITIES**

3.1. **The Land Taxes.** Landlord shall pay and discharge all state, county, city, school, utility district, and other local taxes, general and special assessments, impositions, and other charges of every description (the "Land Taxes") that may be levied on or assessed against the Land (but not the ground lessee's interest therein or the improvements thereon) to the extent that the same are attributable to the Lease Term. Landlord shall pay the Land Taxes in full to the public officer charged with the collection thereof before the same shall become delinquent. If a delay in payment of the Land Taxes results in the imposition on Tenant of any penalty, interest, or other expense Landlord shall be solely liable for same and hereby **INDEMNIFIES** Tenant and its successors and assigns against any loss, cost, liability, or expense for same.

3.2. **The Building Taxes.** Tenant shall pay and discharge all state, county, city, school, utility district, and other local taxes, general and special assessments, impositions, and other charges of every description (the "**Building Taxes**") that may be levied on or assessed against the improvements now or hereafter (during the Lease Term) situated upon the Land (but not the taxes on the Land itself) to the extent that the same are attributable to the Lease Term. Tenant shall pay the Building Taxes in full to the public officer charged with the collection thereof before the same shall become delinquent. If a delay in payment of the Building Taxes results in the imposition on Landlord of any penalty, interest, or other expense Tenant shall be solely liable for same and hereby **INDEMNIFY** Landlord and its successors and assigns against any loss, cost, liability, or expense for same.

3.3. **Utilities.** Tenant shall pay or cause to be paid all charges during the Lease Term for water, gas, electricity, waste disposal, telephone, and all other utilities used on the Premises throughout the Lease Term, including any and all connection fees associated with any improvements or additions constructed on the Land during the Lease Term.

#### **ARTICLE IV. USES OF THE LAND**

4.1. **Lawful Uses Permitted.** Tenant shall have the right to use the Land for the operation of manufacturing, distribution, marketing, and any other lawful purpose that does not violate the deed restrictions on the Land.

4.2. **Construction by Tenant Permitted.** Tenant shall have the right (but not the obligation), exercised in Tenant's sole discretion, to construct, alter, renovate, add to, remodel, demolish, remove, relocate, replace, and otherwise to deal with any and all facilities, infrastructure, buildings, and other improvements now or at any time hereafter situated on all or any part of the Land. All such work and expenditures shall be at Tenant's sole cost and expense. All construction, alteration, renovation, additions, and similar work undertaken by Tenant on the Land shall conform to applicable federal, state, and local codes, rules, and regulations; provided, however, that Tenant shall have the right to contest (on reasonable grounds and by ordinary and proper procedures) any such provision or the application thereof to Tenant's work on the Land. No such work shall commence before Tenant's having obtained or having caused to be obtained all required permits or authorizations from governmental authorities having jurisdiction over the Land. Tenant shall **INDEMNIFY** Landlord for any loss, cost, liability, or expense arising from any mechanic's or materialmen's lien filing against the Land in connection with any such work.

4.3. **Waiver of Landlord's Lien.** All equipment, furnishings, inventory, work-in-process, and other personal property now or hereafter situated on the Land or used in connection therewith (the "**Personalty**") shall remain the exclusive property of Tenant. Notwithstanding anything to the contrary contained in this Ground Lease, Landlord shall not have and does hereby expressly **WAIVE AND RELINQUISH** any lien or claim for lien, whether granted by constitution, statute, rule of law, or contract relating to the Personalty for any purpose whatsoever, including as security for the payment of rentals hereunder.

4.4. **Unlawful Uses Prohibited.** Tenant agrees not to use any part of the Land or any improvement situated upon the Land for any use or purpose in violation of any federal, state, or local law, regulation, or ordinance, including any quasi-governmental authority having jurisdiction over the Land. Tenant shall not use any part of the Land or any improvement situated upon the Land for any purpose that violates any recorded deed restriction or similar restrictive covenant.

## **ARTICLE V. MORTGAGEE PROVISIONS**

5.1. **Leasehold Mortgages Permitted.** Notwithstanding Article X below, at any time and from time to time prior to the termination of this Ground Lease, Tenant shall have the right to mortgage, grant a lien upon, and a security interest in (and assign as collateral) Tenant's leasehold estate in the Land and the Tenant's other rights hereunder to a mortgagee (hereinafter, "**Permitted Mortgagee**") in *bona fide* commercial transactions without the prior consent of Landlord by the creation or execution of contractual liens, deeds of trust, mortgages, assignments, or similar instruments (individually, a "**Permitted Mortgage**" and collectively, the "**Permitted Mortgages**").

5.2. **Leasehold Mortgage Provisions.** Every Permitted Mortgage shall provide, and absent an express disclaimer of this Section shall be deemed to have expressly provided, that: (i) such mortgage, pledge, lien, or other encumbrance upon Tenant's leasehold estate hereunder is second, inferior, and subordinate to the rights of Landlord in and to the Land; (ii) the Permitted Mortgagee shall not exercise any of its remedies under the relevant loan documents, including acceleration of the maturity of the indebtedness thereunder, for any default or defaults of Tenant under such loan documents or in connection with such loan, without first advising the Landlord in the manner provided in Section 15.11, below and permitting the Landlord opportunity to cure any such default that is capable of being cured; (iii) such Permitted Mortgagee will accept a cure by the Landlord of any such default under such loan documents that is capable of being cured, except that Landlord shall not be required to cure any such default and Landlord shall have a cure period which shall commence upon notice to Landlord of such default and shall be equal in length to the applicable cure period, if any, as provided to Tenant in such loan documents; and (iv) all payments so made and all things so done or performed by Landlord shall be as effective to prevent an acceleration of the maturity of the indebtedness, the foreclosure of any liens securing payment thereof or the exercise of any other remedies by such Permitted Mortgagee upon default by Tenant thereunder as the same would have been if paid, done, or performed by Tenant instead of by Landlord. Landlord shall not be or become liable to any such Permitted Mortgagee as a result of the right and option to cure any such default or defaults by Tenant.

5.3. **Mortgagee Protective Provisions.** Lessor hereby agrees to the following for the benefit of any and every Permitted Mortgagee, provided that written notice of a then current name and mailing address of such Permitted Mortgagee has been given to Landlord in writing in the manner and at the address provided herein for the delivery of notices hereunder.

A. **Certain Defaults Excluded.** Those Events of Default (defined below) hereunder that by their very nature may be cured only by Tenant (as, for example, the bankruptcy of Tenant) shall not constitute grounds for enforcement against the Permitted Mortgagee (or other purchaser at any foreclosure of the Permitted Mortgage) of rights, recourse, or remedies hereunder by Landlord including termination of this Ground Lease.



If a Permitted Mortgagee enforces the rights and remedies pursuant to the terms of its Permitted Mortgage (including foreclosure of any liens or security interests encumbering the estates and rights of Tenant under this Ground Lease) such enforcement shall not constitute an Event of Default hereunder.

**B. Succeeding to the Rights of the Tenant.** In the event that a Permitted Mortgagee forecloses the liens and security interests of its Permitted Mortgage and, as a result of such foreclosure such Permitted Mortgagee or other purchaser thereby succeeds to the rights, titles, and interests of Tenant under this Ground Lease, then such Permitted Mortgagee or other purchaser shall be subject to all of the terms and provisions of this Ground Lease as then in effect and shall be entitled to all of the rights and benefits of the lessee under this Ground Lease as then in effect; provided however, that: (i) such Permitted Mortgagee shall not be liable for any act or omission of Tenant; (ii) such Permitted Mortgagee shall not be subject to any offsets or counterclaims which Landlord has or might have against Tenant; and (iii) upon the written request of such Permitted Mortgagee, the Landlord shall join in a written reaffirmation of the validity of this Ground Lease. The liability of shall be limited to the period during which the Permitted Mortgagee may own the interest of the Tenant hereunder. Upon any subsequent transfer by a foreclosing Permitted Mortgagee or other purchaser at foreclosure of a Permitted Mortgage, the transferor shall have no further liability for any obligations hereunder arising after the transfer date, which liability shall be borne by the transferee.

## **ARTICLE VI. COOPERATION**

**6.1. Landlord's Access.** Tenant shall permit Landlord's agents, representatives, and employees to enter on the Land at reasonable times for the purposes of review and inspection as provided in this Ground Lease, to determine whether Tenant is in compliance with the terms of this Ground Lease, and for other reasonable purposes. Except in enforcing any express provision of this Ground Lease, Landlord shall not disturb construction on the Land and shall use its best efforts to not disturb Tenant's permitted uses of the Land.

**6.2. Landlord's Duty to Assist.** Landlord shall use its best efforts to assist Tenant in, and shall in all respects cooperate with Tenant's reasonable requests related to, the development of the Land, the construction of Tenant's desired facilities and improvements thereon, and the ownership and utilization of the entire facility (including without limitation, zoning, planning, and building department applications, requests and tax valuation protests and similar proceedings, and the granting, amending or relocating of existing or additional easements burdening or serving the Land).

## **ARTICLE VII. INSURANCE**

**7.1. Liability Insurance.** At all times during the Lease Term, Tenant shall name Landlord as an additional insured under any Comprehensive General Liability insurance that Tenant may have in effect for its operations on the Land. Landlord agrees to promptly endorse to Tenant liability insurance proceeds checks provided that no Event of Default on the part of Tenant is then outstanding hereunder.

**7.2. Certificates of Insurance.** Prior to the termination of this Ground Lease Tenant shall furnish Landlord upon request certificates of all insurance required by this Article. Each such certificate from an insurer shall set forth the insurer's agreement or undertaking to notify Landlord at least ten (10) days prior to cancellation of such insurance.

## **ARTICLE VIII. DEFAULTS AND REMEDIES**

**8.1. Events of Default.** The occurrence of any of the following events shall each be deemed to be an event of default ("Event of Default") by Tenant under this Ground Lease:

**A. Payment Defaults.** Tenant shall fail to pay any sum required to be paid under the terms and provisions of this Ground Lease and such failure shall not be cured within thirty (30) days after receipt of written notice from Landlord of such failure;

**B. Execution Against the Leasehold.** The taking by execution of Tenant's leasehold estate under this Ground Lease for the benefit of any person or entity other than a Permitted Mortgagee or a purchaser at a foreclosure of a Permitted Mortgage.

**C. Other Defaults.** Tenant shall fail to perform any other covenant, agreement, or obligation (other than for the payment of money as described in Subsection 8.1A, above) to be performed by Tenant and shall not cure such failure within thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that Tenant shall not be in default hereunder so long as Tenant has diligently commenced to cure such failure within such thirty (30) day period and diligently continues to cure such default, but in no event shall such cure period extend beyond ninety (90) days after such written notice to Tenant;

**D. Involuntary Bankruptcy.** The filing of a petition for relief against Tenant under any section or chapter of the Federal Bankruptcy Code or any successor statute, as now or hereafter constituted, or under any similar law or statute of the United States or any state thereof (collectively, the "Bankruptcy Laws"), or the entry of a decree or order by a court having jurisdiction over the Land appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of or for Tenant or any substantial part of the assets of Tenant or ordering the winding up or liquidation of the affairs of Tenant, and the continuance of any such filing, decree, or order unstayed and in effect for a period of ninety (90) consecutive days.

**E. Voluntary Bankruptcy.** The commencement by Tenant of a voluntary case under any one or more of the Bankruptcy Laws or the consent or acquiescence by Tenant to the commencement of a case under any one or more of the Bankruptcy Laws or to the appointment of a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of or for Tenant or any substantial part of the assets of Tenant.

**8.2. Lessor's Rights Upon Default.** Upon the occurrence and during the continuance of any Event of Default hereunder, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

**A. Termination.** Terminate this Ground Lease and seek any and all damages available under applicable law arising directly or indirectly from any one or more Events of Default, in which event Tenant shall immediately surrender the Land to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession and expel or remove Tenant and any other person or entity occupying the Land or any part thereof. Tenant agrees to pay to Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of such Event of Default and termination.

**B. Removal.** Enter upon and take possession of the Land and expel or remove Tenant and any other person or entity occupying the Land or any part thereof, and if Landlord so elects, relet the Land on such terms as Landlord shall deem advisable and receive the rent thereof. Tenant agrees to pay to Landlord on demand any deficiency in rentals that may arise by reason of such reletting; and

**C. Cure at Tenant's Expense.** Enter upon the Land and do whatever Tenant is obligated to do under the terms of this Ground Lease, and Tenant agrees to reimburse Landlord on demand for any expenses incurred by Landlord in effecting compliance with or performance of Tenant's obligations under this Ground Lease. Tenant further agrees that Landlord shall not be liable for any damages resulting to the Tenant from such action except to the extent such damages result solely from Landlord's negligence or wilful misconduct.

**8.3. No Implied Terminations or Waivers.** No re-entry or taking possession of the Land by Landlord shall be construed as an election on its part to terminate this Ground Lease unless an express written notice of such intention is given to Tenant. Notwithstanding any such reletting or re-entry or taking possession, Landlord may at any time thereafter elect to terminate this Ground Lease for any previous uncured default which theretofore had not been waived by Landlord in writing. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of other remedies provided by or available under applicable law. Pursuit of any remedy herein provided shall not constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions, or covenants herein contained. No waiver by Landlord of any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of any other violation or Event of Default. The loss or damage that Landlord may suffer by reason of termination of this Ground Lease or the deficiency from any

reletting as provided for above shall include the expense of repossession. Should Landlord at any time terminate this Ground Lease for a default, in addition to any other remedy Landlord may have, Landlord may recover from Tenant all damages Landlord may incur by reason of such default, including the cost of recovering the Land and the loss of all rentals hereunder then remaining unpaid.

8.4. **Holding Over.** Should Tenant continue to hold the Land after this Ground Lease terminates whether by lapse of time or otherwise, such holding over shall, unless otherwise agreed by Landlord in writing, constitute and be construed as a tenancy from month-to-month at a rental rate equal to the monthly rental payable during the last month this Ground Lease (or at a rental rate equal to one twelfth (1/12th) of the annual rental rate if the rental rate hereunder is then expressed as an annual figure). The inclusion of the preceding sentence shall not be construed as Landlord's permission for Tenant to hold over.

## **ARTICLE IX. CONDEMNATION**

9.1. **Total Taking.** As used herein, the term "Taking" shall mean the actual or constructive condemnation, or the actual or constructive acquisition by condemnation, eminent domain, private sale in lieu thereof, or similar proceeding by or at the direction of any governmental authority or other person or entity with the power of eminent domain. Upon any permanent Taking of the entire Land during the Lease Term where such Taking relates to the entire fee simple title to the Land, as well as the rights, titles, and interests of the Tenant hereunder, then Tenant may elect, on or before the date of such Taking, to pay over to Landlord the purchase price for the Land (as set forth in Article XIV) and shall thereafter be entitled to receive the entire award or proceeds from such Taking. The purchase payable shall be the amount stipulated in Article XIV irrespective of the amount of any damages for the Taking of the Land. If Tenant does not elect to purchase the Land and pay such purchase price to Landlord, then: (i) Tenant shall be entitled (free of any claim of Landlord) to any payment or other compensation from the Taking for the value of Tenant's interest in the Land (as well as Tenant's fee interest in all of the improvements, subject to the terms of this Ground Lease) and its rights under this Ground Lease, as well as damages to any of its other property together with any other compensation or benefits specifically awarded to Tenant's business; and (ii) Landlord shall be entitled (free of any claim of Tenant) to any payment or other compensation from the Taking for the value of Landlord's interest in the Land (such value to be determined as if this Ground Lease were in effect and continuing to encumber Landlord's interest for the entire Lease Term).

9.2. **Partial Taking.** Upon a temporary Taking or a Taking of less than all of the Land during the Lease Term, the following shall apply:

A. **Proration Based on Area.** Tenant may elect to receive the entire award or proceeds from such Taking and shall pay over to Landlord a prorated portion of the purchase price specified in Article XIV below, determined by dividing such purchase price by the total number of square feet in the Land and multiplying the result by the total number of square feet subjected to the Taking. The amount payable hereunder shall be the amount determined by the preceding formula irrespective of the amount of any damages awarded with respect to the portion of the Land taken. The purchase price of the remainder of the Land pursuant to Article XIV shall be reduced by any amount paid to Landlord hereunder.

**B. Exercise Purchase Option.** Tenant may elect, on or before the date of the funding of the Taking to pay over to Landlord the entire purchase price for the Land specified in Article XIV below and thereafter shall be entitled to receive the entire proceeds from such Taking as well as title to the portion of the Land not taken.

**C. Accept Allocated Awards.** Tenant may elect not to purchase the portion of the Land taken, nor the entirety of the Land, in which event this Ground Lease shall terminate as to the portion of the Land taken as of the date of the funding of the Taking and the rent payable during the unexpired portion of this Ground Lease shall be reduced to such extent as may be fair and reasonable under the circumstances. In such event, then: (I) Tenant shall be entitled (free of any claim of Landlord) to any payment or other compensation from the Taking for the value of Tenant's interest in the Land taken (as well as Tenant's fee interest in all of the improvements taken, subject to the terms of this Ground Lease) and its rights under this Ground Lease with respect to the Land taken, as well as damages to any of its other property together with any other compensation or benefits specifically awarded to Tenant's business; and (ii) Landlord shall be entitled (free of any claim of Tenant) to any payment or other compensation from the Taking for the value of Landlord's interest in the Land taken (such value to be determined as if this Ground Lease were in effect and continuing to encumber Landlord's interest for the entire Lease Term).

## **ARTICLE X. ASSIGNMENT AND SUBLETTING**

**10.1. Restriction Against Subletting.** Tenant is not authorized to sublet its leasehold estate in all or any portion of the Land without Landlord's prior written consent; provided, however, that Landlord's consent is hereby granted for: (I) subleases of rail trackage on the Land; (ii) subleases to Tenant's affiliates; and (iii) subleases of less than two years in duration. The making of any permitted sublease shall not release Tenant from, or otherwise affect in any manner, any of Tenant's obligations hereunder.

**10.2. Restriction Against Assignments and Transfers.** Tenant's leasehold estate hereunder is expressly non-assignable without the express prior written consent of Landlord and any attempted transfer, conveyance, attachment, or assignment thereof without Landlord's express prior written consent shall be, and shall be deemed to be, void *ab initio*. Tenant is not authorized to assign its leasehold interest in this Ground Lease without the express prior written consent of the Landlord. The making of any permitted assignment shall not release Tenant nor any subsequent assignee from, or otherwise affect in any manner any of Tenant's or such subsequent assignee's obligations hereunder. Nothing contained in this Section shall be construed as limiting Tenant's right to enter into arms' length *bona fide* secured lending transactions under Article V above.

## ARTICLE XI. REPRESENTATIONS AND WARRANTIES

11.1. **Landlord's Warranty of Title.** Landlord represents and warrants that it is the owner in fee simple of the Land and that the Land is not subject to any liens or encumbrances that would cause Landlord to lose fee simple title to the Land or which would prevent Landlord from performing its duties under this Ground Lease.

11.2. **Landlord's Covenant of Quiet Enjoyment.** Landlord covenants and agrees that Tenant, upon paying the rent and other charges herein provided for and upon observing and keeping the covenants, conditions, and terms of this Ground Lease on Tenant's part to be kept or performed, shall lawfully and quietly hold, occupy, and enjoy the Land during the Lease Term without hindrance or molestation from Landlord or any person claiming under Landlord.

11.3. **No Partnership.** Nothing contained herein shall be deemed or considered to be by the parties or any third party as creating the relationship of principal and agent, partners, joint venturers, or fiduciaries. The relationship between Landlord and Tenant at all times shall remain solely that of lessor and lessee.

11.4. **Force Majeure.** It is expressly agreed that if the performance of any covenant, agreement, obligation, or undertaking herein contained is delayed by reason of war, civil commotion, act of God, governmental restrictions, regulations, or interferences, fire, other casualty, or any circumstances beyond Landlord's or Tenant's control or beyond the control of the party obligated or permitted under the terms hereof to do or perform the same (exclusive of Tenant's rental payment obligations), regardless of whether any such circumstance is similar to any of those enumerated or not, each such party shall be excused from doing or performing same during such period of delay. Any payment or performance falling due on a day that is not a Business Day shall instead be accepted as punctually paid or performed if paid or performed on the next succeeding Business Day. As used herein, the term "Business Day" shall mean any day that is not a Saturday, a Sunday, or a day on which banking institutions in the State of Texas are authorized or required by law to close.

## ARTICLE XII. IMPROVEMENTS

Upon the final termination of this Ground Lease (whether by expiration of time or otherwise), Tenant shall deliver up the Land, with all permanent improvements then located thereon, broom clean and in their then current repair and condition; provided, however, that if this Ground Lease is terminated by Tenant's merging its lessee's interest into the fee title to the Land upon consummation by Tenant of a purchase of the Land (pursuant to Article XIV below, or otherwise), then all such improvements shall be and remain the property of Tenant. All permanent alterations, additions, and improvements made in or upon the Land shall be Landlord's property upon any such termination of this Ground Lease and shall remain on the Land without compensation to Tenant, subject to purchase by Tenant pursuant to Article XIV below. Notwithstanding the foregoing, Tenant shall be allowed to remove all temporary improvements (including temporary and portable buildings), removable fixtures, and all furnishings, equipment, machinery, inventory, work-in-process, and other personalty upon any termination of this Ground Lease.

### ARTICLE XIII. TERMINATION AND EXTENSION OPTIONS

13.1. Tenant's Extension Options. Provided there then exists no uncured Event of Default of Tenant hereunder, Tenant shall have the option to renew and extend the Lease Term for an additional fifty (50) year period upon written notice from Tenant to Landlord, and such extension period shall constitute and comprise a portion of the Lease Term hereunder. Such extension period shall be upon all the same terms, covenants, and conditions as set forth herein.

13.2. Tenant's Option to Terminate in Whole or in Part. At any time during the initial or any extended portion of the Lease Term the Tenant, but not the Landlord, shall have the unilateral right (at Tenant's sole option) to terminate this Ground Lease upon thirty (30) days' express written notice from Tenant to Landlord and any paid, but unaccrued rentals hereunder shall be prorated to the date of termination. In addition, at any time during the initial or any extended portion of the Lease Term the Tenant shall have the right (upon thirty (30) days' express written notice from Tenant to Landlord) to return to the Landlord any portion of the undeveloped, unused, or undesired portion of the Land (selected and determined in Tenant's sole discretion) and this Ground Lease shall thereby terminate as to the portion of the Land so returned without affecting or limiting in any way this Ground Lease's continued effectiveness and application to the portion of the Land retained by Tenant hereunder, except however that the Tenant shall thereby become entitled to an appropriate reduction in the amount of the rental payable hereunder, as reasonably determined by the Landlord and the Tenant. From and after any such return of land hereunder, the land so returned shall cease to be a portion of, or included within the meaning of, the term "Land" as used herein.

### ARTICLE XIV. PURCHASE OPTION

14.1. Option Exercise. Tenant shall have the option to purchase all or any portion of the Land from Landlord for an aggregate purchase price equal to One Thousand Nine Hundred Forty-Six Dollars and Seventy-One Cents (\$1,946.71) per acre. Tenant shall be entitled to a credit against such purchase price for the relevant amount of unaccrued rents that it has then paid to Landlord pursuant to this Ground Lease. Tenant shall be entitled to exercise such option by giving written notice thereof to Landlord at any time during the Lease Term (including all renewals and extensions thereof). If Tenant exercises its option, the Closing shall be held at the principal offices of the Tenant in Harris County, Texas, beginning at 11:00 o'clock a.m. on the first Business Day (defined below) following the sixtieth (60th) day after the date of Tenant's notice to the Landlord exercising such option or at any earlier Business Day as may be specified in such notice or at such other time or place as Landlord and Tenant may agree to in writing.

14.2. **Closing.** All rents and taxes shall be prorated to the date of Closing, Landlord shall, at its sole cost and expense, furnish to Tenant an Owner's Policy of Title Insurance from a title insurer acceptable to Tenant, in the full amount of the purchase price, subject to no exceptions other than those that Tenant and Landlord mutually agree to include as exceptions in Landlord's general warranty deed for the Land (or portion thereof) to be conveyed to Tenant. Landlord and Tenant shall each pay all of their own costs and expenses incurred in connection with such Closing. At Closing Landlord will deliver to Tenant a general warranty deed conveying to Tenant good and indefeasible title to the Land free and clear of all liens and encumbrances except for such easements and restrictions which were of record as of the date of this Ground Lease together with such other matters as may have been expressly approved by Tenant as title exceptions in such deed.

14.3. **Default by Landlord.** In the event that Tenant performs all of the conditions to be performed by it hereunder and Landlord fails to close the transaction contemplated hereby, Tenant may bring suit against Landlord for specific performance hereof or may sue Landlord for damages under applicable law. Tenant shall be entitled to recover its reasonable attorneys' fees expended in connection with successfully enforcing its rights hereunder.

14.4. **Default by Tenant.** In the event that Tenant exercises its option but then fails to close, Landlord may terminate Tenant's purchase right or obtain specific performance hereof and shall in addition be entitled to recover its reasonable attorney's fees in connection with successfully enforcing the right of specific performance.

## **ARTICLE XV. MISCELLANEOUS**

15.1. **Acknowledgment.** With regard to the transactions contemplated hereby the parties hereto each acknowledge to the other of them: (i) that each party and its counsel have reviewed and revised this Ground Lease; (ii) that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Ground Lease or any amendments or exhibits hereto; (iii) that neither party has received from the other any accounting, tax, legal, or other advice; and (iv) that each party has relied solely upon the advice of its own accounting, tax, legal, and other advisors.

15.2. **Entire Agreement.** Each party hereto acknowledges to the other that the acknowledging party has not been induced to enter into this Ground Lease by any covenant, representation, or warranty not specifically set forth herein. This Ground Lease contains the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all existing agreements, whether oral or written, and all other communications among the parties hereto concerning the subject matter hereof. No modification, waiver, release, rescission, or amendment of any provision of this Ground Lease shall be made except by a written instrument signed by each of the parties hereto.

15.3. **Binding Effect.** This Ground Lease shall bind and benefit Landlord, the Tenant, and their respective legal representatives, successors, and permitted assigns. The Tenant and Landlord hereby disclaim any third party reliance on any term or provision hereof and no third parties may rely upon any term or provision hereof to their benefit.



15.4. Severability. In the event that any provision of this Ground Lease or the application thereof to any person or circumstance is determined to be to any extent unenforceable under or contrary to any existing or then existing local, state or federal law, regulation, rule, or order, then said provision shall be deemed excised therefrom and shall be deemed a nullity either in full or as applied to such person or circumstance, as the case may be, without in any way affecting any other provision hereunder, the remainder of this Ground Lease to be enforced without regard to the excised and nullified portion. Any such finding of unenforceability or invalidity shall not prevent the enforcement of said provision in any other jurisdiction to the maximum extent permitted by applicable law.

15.5. Governing Law. This Ground Lease shall be governed and construed by and in accordance with the laws of the State of Texas and the United States of America. The parties agree that this Ground Lease is performable in Harris County, Texas and that the proper venue for any legal proceeding relating to this Ground Lease is in Harris County, Texas.

15.6. Memorandum of Ground Lease. Landlord and Tenant agree that neither Landlord nor Tenant shall file or record a copy of this Ground Lease in the official public real property records of the county or counties in which the Land is situated. Upon request by either, however, each shall execute a memorandum of this Ground Lease (which memorandum shall make note of the Lease Term, the description of the Land, Tenant's option to purchase same, and Tenant's renewal options) which memorandum shall be executed in recordable form and which may be recorded in the official real property records of the county or counties in which the Land is situated.

15.7. Rights and Remedies Cumulative. The rights and remedies provided by this Ground Lease are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies available under applicable law. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

15.8. Attorneys' Fees. In the event Landlord or Tenant breaches or is alleged to have breached any of the terms of this Ground Lease whereby the parties employ attorneys to protect or enforce their respective rights hereunder, then the prevailing party agrees to pay the other party reasonable attorney's fees so incurred by the prevailing party.

15.9. Time is of the Essence. Time is of the essence of the performance of each and every covenant and agreement contained in this Ground Lease.

15.10. Headings. Article and section headings contained in this Ground Lease and the Table of Contents for this Ground Lease are inserted for convenience or reference only, shall not be deemed to be a part of this Ground Lease for any purpose, and shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof.

**15.11. Notices, Consents, and Approvals.** Any notices, consents, approvals, replies, advice, or other communication required or permitted hereunder must be given in writing and shall be (i) sent by hand-delivery against a signed receipt, (ii) sent by United States Mail, postage prepaid, registered or certified mail, or (iii) by prepaid telegram or confirmed telecopy (provided that such prepaid telegram or confirmed telecopy is simultaneously confirmed by hand delivery or mail in the manner previously described), addressed as follows:

to Landlord:

Haden Road Corporation  
Attention: President  
1100 Louisiana, Suite 3160  
Houston, Texas 77002-5217  
Telephone No. 713/658-9000  
Telecopy No. 713/658-0102

to the Tenant:

Aluminum Chemicals, Inc.  
Attention: President  
1100 Louisiana, Suite 3160  
Houston, Texas 77002-5217  
Telephone No. 713/658-9000  
Telecopy No. 713/658-0102

or to such other address or in the care of such other person as shall be designated hereafter in a timely writing by the applicable party and shall be deemed to have been given (I) on the date when actually hand-delivered, telegraphed, or telecopied, or (ii) on the second (2nd) business day after being mailed (which shall be deemed to occur on the date postmarked on the relevant mail wrapper by the United States Postal Service); in each case in the manner required by this Section.

**15.12. Waivers.** The acceptance by either party of any payment or performance by the other of them after the same is due or in a form different than required hereby shall not constitute a waiver of the right either (i) to require prompt and conforming payment and performance of all other obligations of the untimely or non-conforming party under this Ground Lease or (ii) to declare a default hereunder for such or any other delinquent or non-conforming performance.

**15.13. Exhibits.** Exhibits A and B referenced herein as being attached hereto are hereby incorporated herein for all purposes by this reference.

IN WITNESS WHEREOF, the parties have caused this Ground Lease to be executed and delivered by their duly authorized representatives effective as of the date first stated above.

HADEN ROAD CORPORATION, a Texas  
corporation

By: William F. Sisson  
William F. Sisson  
Vice President

ALUMINUM CHEMICALS, INC., a Texas  
corporation

By: J. Michael Jusbasche  
J. Michael Jusbasche  
President

NB: Exhibit A- Metes and bounds description of the Land  
Exhibit B- Permitted exceptions to title to the Land

# EXHIBIT A

November 30, 1994

DESCRIPTION  
109.3135 ACRE TRACT LOCATED IN  
RICHARD AND ROBERT VINCE SURVEY,  
ABSTRACT NO. 76, HARRIS COUNTY, TEXAS  
MAP NO. FCI 94252

All of that certain 109.3135 acre tract of land located in the Richard and Robert Vince Survey, Abstract No. 76, Harris County, Texas,

, said 109.3135 acres of land being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a 5/8 inch iron rod set in the southerly right-of-way line of Harris County Houston Ship Channel Navigation District Railroad (H.C.H.S.C.N.D.R.R.), based on a width of 100.00 feet, for the northwest corner of a 19.69103 acre tract conveyed by Stauffer Chemical Company to Merichem Company per instrument filed for record in the Official Public Records of Real Property under Clerk's File No. G-905318, and the northeast corner of the herein described tract of land from which a City of Houston Survey Monument No. 5853-0902 bears North 28 deg. 57 min. 35 sec West 736.99 feet, a 5/8 inch iron rod found set in concrete bears South 21 deg. 53 min. 31 sec. East 0.95 feet, said 5/8 inch iron rod for corner is in a curve whose center is located South 28 deg. 55 min. 12.5 sec. West 1870.10 feet;

THENCE in a southerly direction along and with the westerly boundary line of the said Merichem Company 19.69103 acre tract and the Merichem Company 24.82496 acre tract of land filed for record in the Official Public Records of Real Property under Clerk's File No. H-505489, with the following meanders:

1. South 21 deg. 53 min. 32 sec. East 179.27 feet to a 1/2 inch iron rod found for an angle point;
2. South 00 deg. 43 min. 50 sec. West 177.44 feet to a 1/2 inch iron rod found set in concrete for an angle point;
3. South 82 deg. 01 min. 15 sec. East 25.61 feet to a 1/2 inch iron rod found set in concrete for an angle point;
4. South 21 deg. 04 min. 40 sec. West 202.72 feet to a 1/2 inch iron rod found set in concrete for an angle point;
5. South 30 deg. 04 min. 44 sec. West 107.72 feet to a 1/2 inch iron rod found set in concrete for an angle point;
6. South 43 deg. 29 min. 06 sec. West, at 25.27 feet pass a point for the common westerly corner of the said Merichem Company 19.69103 acre tract and 24.82496 acre tract, in all a total distance of 140.27 feet to a 1/2 inch iron rod found set in concrete for an angle point.
7. South 51 deg. 52 min. 24 sec. West 201.04 feet to a 1/2 inch iron rod found set in concrete for an angle point;
8. South 49 deg. 10 min. 03 sec. West 66.52 feet to a 1/2 inch iron rod found set in concrete for an angle point;

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9. South 22 deg. 45 min. 51 sec. West 68.33 feet to a 1/2 inch iron rod found set in concrete for an angle point;
10. South 10 deg. 23 min. 18 sec. West 220.37 feet to a 1/2 inch iron rod found set in concrete for an angle point;
11. ~~THENCE~~ South 09 deg. 23 min. 55 sec. West, at 544.50 feet pass a 1/2 inch iron rod found on line for reference, in all actual distance of 555.13 feet to a point on the left high bank of Greens Bayou for the common south corner of the said Merichem Chemical 24.82496 acre tract and the herein described tract of land;

..... ~~THENCE~~ upstream with the meanders of the left bank of Greens Bayou as follows:

1. North 58 deg. 23 min. 10 sec. West 309.53 feet;
2. North 77 deg. 26 min. 14 sec. West 346.71 feet;
3. South 34 deg. 36 min. 16 sec. West 223.23 feet;
4. South 35 deg. 03 min. 42 sec. West 30.54 feet;
5. North 77 deg. 06 min. 24 sec. West 144.51 feet;
6. North 37 deg. 44 min. 20 sec. West 135.94 feet;
7. South 82 deg. 05 min. 03 sec. West 145.72 feet;
8. South 74 deg. 14 min. 00 sec. West 214.33 feet;
9. South 74 deg. 37 min. 24 sec. West 113.31 feet;
10. South 62 deg. 12 min. 00 sec. West 188.57 feet;
11. South 70 deg. 15 min. 06 sec. West 82.29 feet;
12. South 45 deg. 38 min. 30 sec. West 86.02 feet;
13. South 44 deg. 31 min. 02 sec. West 158.65 feet;
14. South 42 deg. 57 min. 16 sec. West 149.61 feet;
15. South 51 deg. 55 min. 00 sec. West 82.47 feet;
16. South 74 deg. 25 min. 16 sec. West 103.71 feet;
17. South 75 deg. 10 min. 17 sec. West 79.54 feet;
18. North 81 deg. 49 min. 10 sec. West 47.42 feet;
19. North 88 deg. 31 min. 51 sec. West 40.13 feet;
20. South 13 deg. 23 min. 55 sec. West 58.70 feet;

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21. South 55 deg. 39 min. 54 sec. East 38.49 feet;
22. South 51 deg. 46 min. 53 sec. East 30.70 feet;
23. South 31 deg. 38 min. 50 sec. West 30.62 feet;
24. South 46 deg. 45 min. 52 sec. West 135.08 feet;
25. South 49 deg. 36 min. 36 sec. West 152.90 feet;
26. South 60 deg. 23 min. 49 sec. West 157.14 feet;
27. North 35 deg. 24 min. 41 sec. West 106.64 feet;
28. North 75 deg. 25 min. 05 sec. West 29.73 feet;
29. North 31 deg. 09 min. 27 sec. West 132.34 feet;
30. North 08 deg. 15 min. 06 sec. West 90.14 feet;
31. North 03 deg. 03 min. 45 sec. West 102.09 feet;
32. North 08 deg. 15 min. 26 sec. East 237.33 feet;
33. North 17 deg. 04 min. 24 sec. East 75.01 feet;
34. North 20 deg. 49 min. 16 sec. East 73.32 feet;
35. North 18 deg. 44 min. 01 sec. East 78.16 feet;
36. North 22 deg. 14 min. 40 sec. East 82.39 feet;
37. North 17 deg. 18 min. 47 sec. East 88.02 feet;
38. North 32 deg. 23 min. 59 sec. East 81.16 feet;
39. North 39 deg. 09 min. 20 sec. East 77.16 feet;
40. North 40 deg. 00 min. 38 sec. East 67.01 feet;
41. North 42 deg. 45 min. 33 sec. East 48.15 feet;
42. North 49 deg. 09 min. 08 sec. East 146.13 feet;
43. North 48 deg. 48 min. 47 sec. East 183.23 feet;
44. North 52 deg. 21 min. 27 sec. East 218.52 feet;
45. North 25 deg. 39 min. 40 sec. East 59.30 feet;
46. North 28 deg. 20 min. 28 sec. East 71.02 feet;
47. North 32 deg. 13 min. 10 sec. East 149.52 feet;

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48. North 23 deg. 59 min. 59 sec. East 96.45 feet

49. North 31 deg. 17 min. 33 sec. East 45.54 feet

50. North 23 deg. 11 min. 07 sec. East 78.01 feet

51. North 20 deg. 09 min. 56 sec. East 107.75 feet

52. North 22 deg. 31 min. 56 sec. East 65.97 feet

53. North 11 deg. 22 min. 12 sec. East 187.06 feet

54. North 06 deg. 59 min. 50 sec. West 192.49 feet to a 5/8 inch rod set in the said south right-of-way line of H.C.H.S.C.N.D.R.R. for the northwest corner of the herein described tract of land;

THENCE North 75 deg. 05 min. 39 sec. East, along and with the said south right-of-way line of the H.C.H.S.C.N.D.R.R., a total distance of 1066.63 feet to a 5/8 inch iron rod set for the Point of a Curve of a curve to the right;

THENCE in an easterly direction, along and with the said south right-of-way line of the said H.C.H.S.C.N.D.R.R. following said curve to the right having a Central Angle of 43 deg. 49 min. 33 sec., a Radius of 1870.10 feet, an Arc Length of 1430.45 feet and a Long Chord which bears South 32 deg. 59 min. 34 sec. East 1395.33 feet to the PLACE OF BEGINNING and containing 109.8185 acres of land which also includes that part of Haden Road, a dedicated public road 80.00 feet wide, lying south of the said H.C.H.S.C.N.D.R.R., said Haden Road right-of-way contains 0.3730 acres.



Harold B. Fisher

Registered Professional Land Surveyor No. 558

HBF/M  
ABS76A-HBF  
REV. 2/6/95

1173

EXHIBIT "B"  
PERMITTED EXCEPTIONS

1. Pipeline right-of-way easements of undefined width in favor of Houston Pipeline Company as set forth in instruments recorded in Volume 1023, Page 206 and Volume 1286, Page 601 of the Deed Records of Harris County, Texas.
2. A pipeline right-of-way and easement of undefined width in favor of Explorer Pipeline Company by instrument recorded under Clerk's File No. D-268246 of the Real Property Records of Harris County, Texas.
3. A non-exclusive and right of way easement 25 feet wide as reflected by instrument recorded under Clerk's File No. G-905319 and refiled under Clerk's File No. G-929197 of the Real Property Records of Harris County, Texas.
4. A pipeline right-of-way and easement of undefined over and across the subject tract in favor of Dixie Gulf Gas Co., by instrument recorded in Volume 785, Page 368 of the Deed Record of Harris County, Texas and assigned to United Gas Public Service Co. by instrument recorded in Volume 884, Page 239 of the Deed Records of Harris County, Texas and Oil Tanking of Texas Pipeline Company by instrument recorded under Clerk's file No. G-138122 of the Real Property Records of Harris County, Texas.
5. Ten (10') foot utility easement in favor of Houston Industrial Gas Co. (Ensearch Gas Trans. Co.) by instrument recorded in Volume 5685, Page 547 of the Deed Records of Harris County, Texas.
6. All the oil, gas and other minerals, the royalties, bonuses, rentals and all other rights in connection with same all of which are expressly excepted herefrom, as same are set forth in instrument recorded in Volume 721, Page 268 of the Deed Records of Harris County, Texas. (As to the 27 acres described therein) Surface rights are waived therein.
7. Subject to the terms, conditions and stipulations of: (i) that certain unrecorded Lease Agreement by and between Stauffer Management Company, a Delaware corporation and Houston Regional Monitoring Corporation, a Texas Corporation dated 12/15/94; and (ii) that certain unrecorded Lease by and between Stauffer Chemical Company, a Delaware corporation and Pennwalt Corporation, a Pennsylvania corporation dated 3/1/79.
8. Subject to rights of the general public and/or governmental authorities to use that portion of Hayden Road of which was granted in Volume 828, Page 340 of the Deed Records of Harris County, Texas. A portion of Harden Road was abandoned by instrument recorded in Volume 2544, Page 535 of the Deed Records of Harris County, Texas and as to general public and/or government authorities as to Slag Road as shown on survey dated November 30, 1994, prepared by Harold B. Fisher, R.P.L.S. #558.